

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FINANCE

Call to Order: By **CHAIRMAN BOB KEENAN**, on March 2, 2001 at 9:00 A.M., in Room 315HB Capitol.

ROLL CALL

Members Present:

Sen. Bob Keenan, Chairman (R)
Sen. Ken Miller, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. John Cobb (R)
Sen. William Crismore (R)
Sen. Greg Jergeson (D)
Sen. Royal Johnson (R)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Corey Stapleton (R)
Sen. Bill Tash (R)
Sen. Jon Tester (D)
Sen. Mignon Waterman (D)
Sen. Jack Wells (R)
Sen. Tom Zook (R)

Members Excused: Sen. Tom A. Beck (R)
Sen. Bea McCarthy (D)
Sen. Debbie Shea (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Jon Moe, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 186, 2/27/2001; SB 66,
2/27/2001

{Tape : 1; Side : A}

HEARING ON HB 186

Sponsor: REP. LINDA HOLDEN, HD 86, Valier

Proponents: SEN. RIC HOLDEN, SD 1, Glendive
Bob Gilbert, Montana Wool Growers Association
Bob Stephens, Montana Grain Growers Association
Steve Pilcher, Montana Stock-growers Association
John Semple, Montana Cattlemen
Sandy Nelson, Wibaux County Commissioner and
rancher

Informational Witness: Larry Handegard, Director USDA
Wildlife Services Program

Opponents: None.

Opening Statement by Sponsor:

REP. LINDA HOLDEN, HD 86, Valier, opened on HB 86, an act appropriating \$50,000 from the general fund to the USDA-APHIS Wildlife Services Program to assist with predator control in Montana. She stated that predators feed on both livestock and game animals. Idaho contributes \$158,500 from their general fund to the program and Montana should be responsible in managing its wildlife. It is good stewardship to control predators. Sheep losses were \$1.1 million last year. Montana cattle and sheep producers contribute \$.25 to \$1 per head through self-imposed fees. Federal funds are received for this program. When the state receives federal money, the state's contribution is examined. Montana needs to show good faith through the legislative process. The House Appropriations Committee passed the bill out of committee and the full house passed it 75-25. She passed out copies of a news article. **EXHIBIT(fcs48a01)**

Proponents' Testimony:

SEN. RIC HOLDEN, SD 1, Glendive, strongly supported the measure. Montana currently does not fund the program and he thought it important to do so. The purpose of the bill is to help control predators in Montana. That means that Montana recognizes the necessity of financially supporting the wildlife services program. The appropriation will help support wildlife officers in the field to control the numbers of predators who prey on wildlife, endangered species and livestock. He handed out and explained information on a fawn mortality study, predator losses in 1997, and Montana sheep and lamb losses in 2000.

EXHIBIT(fcs48a02) EXHIBIT(fcs48a03) EXHIBIT(fcs48a04) He pointed

out the financial losses. He felt that putting \$50,000 into the wildlife services budget for helicopter predator control was important for controlling coyote numbers. He also distributed a letter from the Carter County Sheep and Cattle Grower's Association supporting HB 86. **EXHIBIT(fcs48a05) SEN. HOLDEN** stated that there was strong support for the bill.

BOB GILBERT, Montana Wool Growers Association, spoke in support of HB 86. The Wool Growers Association is very much involved in predator control. Predators are the main reason people are dropping out of the sheep business. Wool growers lose 10% of 200 on a closely watched farm flock. In a range operation, the losses are 25-30%. The reason support from the state is being sought, is that the federal government is looking to see if states are supporting the programs and trying to get a formula through for dollar for dollar matches. He supplied information on wildlife losses. He recognized the tight budget, but pointed out the support for the bill in the house. He also stated that there is no danger of eradicating the coyotes. The sheep industry has tried to do that for 100 years. The coyote has expanded its range.

Bob Stephens, Montana Grain Growers Association, supported HB 86. The association supported the bill because most farmers have some livestock that predators affect.

Steve Pilcher, Montana Stock-growers Association spoke in support of HB 86. The livestock industry faces a variety of challenges such as drought, fire, economic slumps and cycles. Predator loss also has a significant impact on profit and loss. As wolf populations in the Yellowstone area grow, predators will begin to impact pet owners. He explained that those who have a philosophical problem with killing predators should balance that with the killing done by predators. Montana has an effective predator program. He said he would appreciate continued support for that program.

John Semple, Montana Cattlemen, urged support for HB 86.

Nancy Schlepp, Montana Farm Bureau, stood in support of HB 86.

Sandy Nelson, Wibaux County Commissioner and rancher, testified that every year the Wibaux area loses calves to coyotes. Last year was the worst. In spite of taking shifts to protect the cattle, many calves were still lost.

Sam Scammon, Wibaux rancher, farmer, commissioner, president of the local wolf pool, spoke in support of HB 86. He testified that since he was a boy, their ranch has had about 250 sheep.

The sheep have been an asset to both the ranch and the environment. Because of the sheep, there are no noxious weeds in the pastures on the ranch. In recent years, the herd had to be cut in half due to the coyote problem and the sheep are kept close to the ranch buildings. They have tried scare guns, guard dogs, scarecrows, and a llama. The wildlife services helps as much as their budget will allow. Of 130 spring lambs, 15 were lost to coyotes last spring. The bill needs to be approved to help the livestock industry.

Larry Handegard, Director USDA Wildlife Services Program, testified that there is an agreement with the Montana Department of Livestock to provide two helicopters. Wildlife Services manages the helicopters and schedules all the flying. They have been very effective, but they have trouble servicing all of the complaints, especially those of the livestock industry. They also do some predator control for FWP. There is a definite need for additional aerial time.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. CHRIS CHRISTIAENS asked about the federal funds that come to Montana and what if any match is required. **Mr. Gilbert,** said that a match has been talked about, but not as yet required. Each session of Congress takes a look at what the states put into the predator control program. At the present time, Montana is not supplying any money to the federal program. The money that is supplied from Montana are taxes on livestock. There is approximately \$360,000 to \$380,000 worth of cattle taxes that are paid by the cattle producer and about \$150,000 that comes from sheep assessment fees at both the state and county levels. That is the money they look at to see if the program is being supported. **SEN. CHRISTIAENS** asked if the helicopters, the fuel and the pilot's time are paid for from those fees. **Mr. Gilbert** explained that the pilot's time, the fuel and the helicopters were paid for out of the contract services run by **Mr. Handegard.** It is a combination of the federal funds and the state funds that were referenced. The pilots are on the federal payroll. There are also 17 trappers. Over \$1 million has been spent on predator control in Montana.

SEN. GREG JERGESON asked if the assessment on cattle and sheep will continue beyond the period when the property tax on cattle and sheep is eliminated. **Mr. Gilbert** said that was correct.

SEN. JERGESON asked if there was an appropriation in the FWP

budget for predator control, if it was contracted within the same system and what the size of the appropriation was. **Mr. Gilbert** said that the budget for FWP previously contained a \$110,000 appropriation to be used for animal damage control and contracted through the Department of Livestock and **Mr. Handegard**. A federal audit of the use of those monies conducted in the last two to three years, indicated that money should not be spent for predator control and the federal government asked the state FWP agency to return all of the monies for the last five years. These were Pitman-Robinson funds that they said were not appropriately spent on predator control because FWP didn't have complete control over the money. That money is then questionable in the current budget and depends on whether FWP will continue to fund the \$110,000. In fact they have said that they will look at it annually. In some years they may fund some of it and some years they may not fund any of it. It's hard to keep a program going with costs for the helicopters without knowing if there is a budget for it. FWP is directing where the money is spent. **Mr. Handegard's** trappers are centered in areas where there are problems with coyotes and wildlife issues using that money.

SEN. LINDA NELSON asked if the \$.25 to \$1 per capita for predator control was decided on a local level by stock growers and wool growers. **Mr. Gilbert** said that was correct. The legislature many sessions ago passed a local county option for a self-assessed tax for predator control on sheep. Three sessions ago a bill was passed that allowed cattle producers to do the same. Cattle producers in **SEN. BILL TASH's** county assess each cow at \$.50. There are a lot of cattle there and it raises \$40,000 to \$50,000. For sheep it is an average of about \$.65 per ewe. **SEN. NELSON** asked if the money goes back proportionately into what the counties put into the fund. **Mr. Gilbert** said the sheep industry felt there had to be a statewide program. The sheep money goes into the overall program and the cattle money stays in the county in which it was raised. **SEN. NELSON** inquired if the \$50,000 that was being asked for would pay for more air time. **Mr. Gilbert** affirmed that it would be for aerial hunting time to buy fixed wing and helicopter time.

SEN. COREY STAPLETON asked about the purpose of the bill in light of recently passed legislation concerning deer populations. **REP. HOLDEN** related that a friend of hers lives near West Glacier and feeds the deer in their yard because of wolves coming out of the park. There are substantially fewer moose and elk. The predators prey on wildlife first and livestock second. The state is losing about \$2 million in taxable livestock. She submitted that the \$50,000 would probably be paid back in taxes by ranchers and farmers.

{Tape : 1; Side : B}

She did not want people going out of the sheep business because of the coyotes. The \$50,000 would be worth it to keep the federal dollars. **SEN. STAPLETON** agreed with the economic side, but suggested leaving wildlife alone and targeting the economic impacts. **REP. HOLDEN** submitted that the bill was about jobs in Montana. The \$50,000 would cover about 1½ jobs for trappers.

SEN. NELSON asked about the hourly rates for helicopters. **Mr. Handeburg** replied that the rate was \$560 per hour. Through the state livestock department, the cost is approximately \$345 per hour. Fixed wing costs are \$100 per hour. **SEN. NELSON** asked how much money is available currently through the Department of Livestock. **REP. HOLDEN** said there was no funding from them. All of the funding comes through the self-imposed taxes. **SEN. NELSON** wanted to know how much total money was available for predator control through the taxing. **REP. HOLDEN** said it was about \$240,000. **Mr. Handeburg** stated that the budget for the Department of Livestock aerial program was estimated at about \$400,000 to operate the machines and for possible contract work. Additional funding comes from cattle producers, which also goes for helicopter operations.

SEN. GREG JERGESON asked about the type of weapons used. **Mr. Handeburg** replied that twelve gauge shotguns were used. They are very effective and a safe technique. **SEN. JERGESON** thought that with the price of air time, that a lot of firepower would need to be delivered to the ground. **Mr. Handeburg** said the shotgun was very effective for killing coyotes.

SEN. TOM ZOOK asked how much of the \$400,000 was federal money. **Mr. Handegard** said the \$400,000 was all livestock producer money. **SEN. KEN MILLER** asked about the average kill rate per hour. **Mr. Handegard** said the rate varies, but was probably about 4 to 5 coyotes per hour. They deal with livestock damage, and sometimes a considerable amount of time is used to remove one or two coyotes that are killing livestock. He declared that not too much value should be placed on coyotes per hour. **SEN. MILLER** addressed the federal requirement that funding come from the state general fund in order to be recognized as a commitment from the state and whether FWP money was considered money from the state. **Mr. Handegard** explained that the federal government looks at cooperative dollars. That would be a mix of livestock dollars and state dollars towards the match. They were seriously looking at 50% of the program and considering all sources. **SEN. MILLER** wondered if that included state special revenue. He thought it better if the money could come out of FWP or state special revenue of some sort rather than out of the general fund. **SEN. HOLDEN** said the problem with taking the money from fish and game,

is that the funds are jeopardized. They do not like Montana spending sportsmen dollars on predator control and are fighting giving them any dollars for this program. To rely on their budget for funding would jeopardize the program. In surrounding states, appropriations come out of the state general funds because of Washington D.C. politics. **SEN. MILLER** suggested taking money from FWP, putting it in the general fund and sending it to the program. **SEN. HOLDEN** said that they were trying to increase the FWP budget by \$50,000. The intent of the bill is to maintain the program and put additional dollars into the system to get more flying time. **SEN. MILLER** was thinking of taking additional dollars from some of their pools to put into the general fund. **SEN. HOLDEN** thought that might be an option. **Mr. Gilbert** had no objection to the idea. The audit was about sportmen's dollars and Pitman-Robinson. He believed that FWP had a problem with funding it from those sources. There needs to be some other way to do it with appropriations from the general fund. The main thing is to get more money for an expensive program. **SEN. MILLER** said the \$50,000 would not go very far. He wondered about the match. **Mr. Gilbert** acknowledged that it was not a lot of money, but he once worked hard for just \$5000 for coyote control. The House Appropriations Committee considered doubling the amount to \$100,000, but because of the budget that was not done. He said he was actively involved in getting the appropriations process into Montana. Montana has been fortunate in getting more money from the federal government into the animal damage control program because of **SEN. MELCHER, SEN. BURNS** and **SEN. BAUCUS**.

SEN. BILL CRISMORE asked for clarification about coyotes per hour. **Mr. Handeburg** reported that the numbers vary. In 7.9 hours in the Great Falls area they took 156 coyotes within the last month.

SEN. BILL TASH asked about the increasing need for predator control and the issue of the international fur market. **Mr. Gilbert** replied that at one time coyote furs were up to about \$100 to \$150 per coyote. Then there was a conflict between trappers and aerial control. There was a bill to ban the aerial hunting of coyotes. The price for coyotes is now \$15 to \$20. The furs are mangy, the market is low, and not as many people are out harvesting furs. When prices for coyote furs were higher, there were fewer coyotes but more conflict.

CHAIRMAN BOB KEENAN remarked that a 1993 spending authority was issued for \$200,000 to upgrade the wildlife rehabilitation center that was never spent. There are pages of FWP special revenue that might be worked with.

Closing by Sponsor:

REP. HOLDEN closed on HB 186. She stated the belief that more taxes will come in with the passage of the bill to pay back the investment. Industry lost the use of toxicants. Aerial flying is much more expensive. There are 17 trappers in the state. She believed that the issue is important and funding is warranted.

HEARING ON SB 66

Sponsor: SEN. JOHN BOHLINGER, SD 7, Billings

Proponents: Marty Lambert, Gallatin County Attorney
Dennis Paxinos, Yellowstone County Attorney
Chris Miller, Powell County Attorney and President
of the County Attorney Association
John Connor, Chief of Prosecution Services Bureau,
Attorney General's Office

Opponents: None.

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7, Billings, brought forward a bill in the last legislative session that provided for longevity payments for county attorneys. The bill passed and was signed into law. However the bill had a sunset provision, and on June 20, 2001 that payment will be discontinued. The longevity payment bill became law because the legislature realized that county attorneys were under-paid. As a consequence they are leaving for better paying jobs in the private sector. In the last ten years there has been a 28% turnover. Full time county attorney salaries range from \$53,500 to \$72,425. Yellowstone County Attorney Dennis Paxinos is paid the maximum. He is responsible for managing a staff of 19 deputy county attorneys and a staff of 18 office and support people. He manages a case load of 1100 felonies, 1000 misdemeanor cases and 400 youth petitions. In Billings, a private sector attorney with that much responsibility earns tens of thousands more than a county attorney. Well qualified and trained prosecutors are moving from public service into private sector jobs. In smaller counties, part time county attorneys are paid from \$16,000 to \$30,000 annually. Full time county attorneys are required to give up their law practice and client base to serve in the public sector. Vacation pay and sick leave are not provided. The job requires 3 years of experience. These facts serve as a disincentive. He discovered that a big part of the job of legislators is to bring about conditions of fair play and to anticipate problems and provide solutions.

There is a case for increasing the salaries of county attorneys or losing them and their wealth of experience to the private sector. The Montana legislature has consistently recognized the need for state and local governments to provide competitive wages, especially when trying to keep professionals in law enforcement capacities. Presently, the state pays half of the salaries of county attorneys. SB 66 phases in a payment schedule that by 2005 will pay county attorneys 95% of what district court judges are paid. The 1956 legislature decreased the local jurisdictional tax base through the reduction of business, equipment and personal property taxes. These reductions in the tax base were only partially reimbursed by the state. By state assumption of the responsibility of the salaries of the county attorneys, some of the costs of doing business at the local level are offset. Over the past 3 sessions of the legislature, new duties and responsibilities have been created for county attorneys without providing a funding base for those duties. New responsibilities include felony DUI, family member assault, felony stalking, assault on a police officer, rewriting the child abuse and neglect statutes as well as rewriting the youth court act. Presently district court judges are paid \$82,606 annually. In 1991, the disparity between what a district court judge made and county attorneys made was only \$1000. District judges were paid \$51,000 and county attorneys were paid \$50,000. The disparity has grown considerably. Under the proposal, county attorneys with populations in excess of 30,000 would be paid in a phased in schedule. He passed out and explained a new fiscal note. **EXHIBIT(fcs48a06)** SB 66 will not have a fiscal impact on the state's general fund in FY2001 or FY2002. In 2003, it will save the state general fund \$60,507. In 2004, it will cost the general fund \$293,422 and in 2005, when the pay plan is fully implemented it will have a cost of \$1,621,181. He commented that it was not uncommon for the state to make forward commitments that have financial consequences on future legislatures. He asked for favorable consideration of the proposal. He handed out a sheet of facts on SB 66. **EXHIBIT(fcs48a07)**

Proponents' Testimony:

Marty Lambert, Gallatin County Attorney, addressed the responsibilities of county attorneys and the need for consistency in all counties. County attorneys are the chief prosecutor of felony crimes and responsible for probation and parole. The job is an on-call 24 hour a day 365 day a year commitment. They prosecute all misdemeanors outside the incorporated city limits within the county and handle all post conviction hearings and juvenile petitions. All child abuse and neglect matters, adult protective services and involuntary commitment cases are handled. The county attorney assures the safety of the public throughout

the state. All of the laws are brought in the name of the State of Montana, not respective counties. That is why it is important the position be funded and be treated equally across all the counties of the state. County attorneys have civil responsibilities that include representing county commissioners and departments, they defend all lawsuits brought against the county and prosecute all claims brought on behalf of the county. They represent all fire districts and fire service areas, and school districts. County government needs to have good competent advice from county attorneys. SB 66 is an effort to secure good, experienced, qualified attorneys in that position throughout all counties in the state and pay them the same. He urged passage of SB 66.

Dennis Paxinos, Yellowstone County Attorney, gave a history lesson. He also stated that he and Gallatin County Attorney Lambert and Missoula County Attorney VanValkenburg were not asking for money and are satisfied with their salaries. They will go into a holding pattern, but are not satisfied with how the state is treating county attorneys statewide. All of the duties apply in every county. Those are duties mandated by the legislature and they perform those duties on behalf of the state. As recognition of the state duties, the legislature decided to pay half of county attorney salaries. Prior to 1985, the state not only paid half of the county attorney salary but half of two deputy county attorneys as well. In 1985, county commissioners, the attorney general and county attorneys came before the legislature and said they could not retain deputy county attorneys. There was a need for more funding from the state. The state allowed a surcharge on every criminal case in justice or district court to be earmarked for longevity pay for deputy county attorneys. With that the state withdrew its support of the two deputies in order to fund the longevity for all of the deputy county attorneys across the state. The earmarked funds became a bother for the courts. They still assessed the surcharge but half of the money went to the state and half stays in the county. In 1990, the commissioners, attorney general, and county attorneys came to the legislature regarding disparity in pay levels of county attorneys. The legislature set the salary for full time county attorneys at \$50,000 per year. There was discussion for making the salaries equal to district judges, but it was decided to keep them slightly below the judges' salaries. All county attorneys received \$50,000 and district judges received \$51,000. They took away pay mechanisms no matter what the case loads or population in order to make salaries consistent. The legislature made pay raises by county commissioners optional. Some counties gave raises and others did not. Ten years later, a disparity exists. County attorneys are asking to be paid a percentage of district judge salaries. Competitive salaries are needed to attract and keep qualified

county attorneys. He urged passage for SB 66. It is important for victims of crimes.

Chris Miller, Powell County Attorney and President of the County Attorney Association, asserted that the pay disparity means a great deal in smaller counties. He stated that many are in prosecution because it is good and important work. Money is not the principle reason. County attorneys are different from other lawyers in that they have the authority and responsibility to charge people with crimes. In smaller counties the funding issue is significant. In Powell County, the state contributes half of his salary, about \$30,000. Under this bill in five years, Powell County's share would be phased out. That is about 3 mills in Powell County. State law mandates that county attorneys provide victim witness services to the victims of crimes. It is funded through a grant program from the Montana Board of Crime Control of about \$29,000 to hire an advocate to perform the function the state imposed. The grant program will dry up. He had a concern about Powell County absorbing the cost. The 3 mills, shifted back to the county as the bill is phased in, would fund victim services. Previous efforts to address pay issues of county attorneys have not worked very well and in fact probably exacerbated differences in salaries between the various counties. This bill would smooth that out over time so that everyone would be on the same pay level for the same work. He noted the uniformity of salaries in the bill would mean less work for DOJ Central Services Division.

Fred Van Valkenburg, Missoula County Attorney, remarked that he serves as the chief human predator control officer in Missoula County (making reference to the previous hearing on coyote control). He is charged with making sure the laws are enforced and the people of Missoula County are as secure in their property and personal safety as can be reasonably hoped. All fifty-five county attorneys in Montana have that same job. The bill asks that the compensation be equal for carrying out the job. He reported feeling awkward about presenting the bill to the committee since the senate has already cast 37 votes in favor of the bill. **SEN. WATERMAN, SEN. MILLER, and SEN. COBB** have already heard the arguments in the Senate Local Government Committee. Of the twelve votes against the bill, eight or nine of them came from members of the Senate Finance Committee. He declared that committee members are probably not opposed to the idea of adequately compensating county attorneys. The job of the committee is to balance the budget and there are tough choices to make. He said he had been in their shoes, he knew how hard it was and he appreciated it. He said there are compelling arguments that the state will have adequate revenue to fund the salaries in the future. It will not result in deficit spending

in this biennium which the committee is principally charged with dealing with. He said it doesn't amount to much in a future biennium. Most of what is involved is a transfer of responsibility from local property taxpayers to taxpayers on a statewide basis. Most of the cost of the bill comes from increasing the state's share from 50% to 95%. If for policy reasons, monies that are going to local governments should be reduced, that is a policy choice that can be made and would in essence justify the passage of the bill as not incurring a greater expense to statewide taxpayers in a future biennium. There are other policy choices to be made down the road. Fines for misdemeanors in Montana are at \$500. The limit for commission of a felony was increased to \$1000. If the bill is funded by increasing fines on misdemeanor offenses, more would probably be collected than the cost of the bill to state government. It was his opinion that President Bush would be successful in getting a federal tax cut through Congress. Federal taxes will be reduced substantially in the next few years. One of the effects of doing that will be to increase state revenue.

{Tape : 2; Side : B}

He thought that there was an obligation to take a step forward with the bill. The 1999 legislature passed the provision dealing with longevity that **Mr. Paxinos** made reference to. The provision had a sunset. There will always be some effect on a future legislature from a past legislative action. The County Attorney's Association is more than willing to work on any other solution that is an appropriate way to deal with the issue. He strongly urged the committee not to think the problem will go away if the bill is tabled or killed. The problem doesn't go away because it is not dealt with now. He said a strong case had been made by other speakers that there is a turnover of county attorneys, that it is harder to attract people to the job, and that work quality is affected if the issue is not taken care of. He submitted that the human predator control issue is as important as anything that the citizens of Montana are concerned about. They care about their safety and security. It is one of the huge advantages Montana has over the rest of the country. County attorneys take their responsibility very seriously in terms of protecting that safety and security and encouraged the committee to do so also.

John Connor, Chief of Prosecution Services Bureau, Attorney General's Office, urged strong support on behalf of **Attorney General Mike McGrath.** Good people make experience based decisions and exercise good discretion and when you have people that are not experienced and do not exercise good discretion it costs money in the criminal justice system and costs money in terms of civil litigation. It makes good fiscal sense from the

Attorney General's perspective to keep good experienced people on the job. The way to do that is with salaries to some degree. He stated that it was a very important measure for the health of the criminal justice system. He urged support for the bill.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

SEN. GREG JERGESON asked about a contradiction in the alternative fiscal note where FY2003 salaries increase to 80% of district court judges. In FY2002 and 2003, total salaries and benefits decline by \$40,000. **Karen Munro, DOJ**, stated that the HB 2 column was left with the present law cost of living raise continuing each year. They estimated a 2.2% cost of living raise in the HB 2 column. In the state cost column, in FY2003 the state would pick up 50% of salary like it does now, but the salaries went up to be 80% of district judge salaries under the proposed bill. In their HB 2 column they said it would go up by the cost of living raise. FY2002 salaries went up 2.2% and helped raise up the HB 2 level compared to the cost of the district judge level. It could have lowered the gap that they were off in FY2002. FY2003 has a cost of living raise in their HB 2 cost that minimizes the gap in 2002. That is why there is a drop in state costs. **SEN. JERGESON** said he could see what was happening in state costs in comparison to HB 2, but was trying to understand the column for salaries and benefits behind by \$40,000 from one fiscal year to the next. **Ms. Munro** stated that in FY2003, the bill proposes that no county attorney will have their salaries reduced. Presently 28 county attorneys make 80% of a district judge. Pay protection is in the bill to those county attorneys, their salaries can't be dropped. A full time county attorney in 2003 would make \$66,000, or 80% of a district judge salary. Presently 28 county attorneys make more than that. Because of the pay protection, the cost in FY2003 had to maintain the same salaries. As a result the other 28 county attorneys got a raise. This was just the way it worked out with the numbers. **Kathy Seacat, DOJ**, stated that the difference is that the county attorneys who are topped off at \$72,000, under HB 2 in 2003 would have received a 2.2% increase. By going to the new revised bill, they would not receive that increase and would stay exactly where they are in 2002. That results in a decrease in the salary cost. **SEN. JERGESON** said he understood how by foregoing those increases some of those county attorneys will generate savings from what is in HB 2, but didn't see how total salaries and benefits could be calculated unless there is a vacant position so that total salaries and benefits could go down. They ought to at least stay

the same if nobody is giving up any salary and some are getting an increase. Total salaries and benefits cannot go down at all. His question was about that column. **Ms. Seacat** replied that in 2003, county attorneys will receive 80% of district court judges and all except for salary protected county attorneys did increase. Yet they didn't increase by the 2.2% which was already on the books for 2002. The key to the savings was really the COLA (cost of living adjustment) increase of the 2.2%.

SEN. MIGNON WATERMAN agreed with **SEN. JERGESON** that if the numbers were accurate under the total salary and benefits for 2002 and 2003, somebody is getting less money. Her question was why was a COLA projected in 2003 if the bill sunsets. She wondered if there was legislation to take the sunset off. **Ms. Seacat** clarified that the sunset was on the longevity. **SEN. WATERMAN** asked if the number for 2002 reflect an increase in the longevity. **Ms. Monroe** said that current law provides for an increase for county attorneys with a cost of living raise. SB 66 takes that away and does the percentage of the district court judges salary. They were trying to find the additional cost to the state if they didn't go with the way it is currently funded in HB 2 and that is how they kept the cost of living raise in the HB 2 column so they could see what the additional cost was. **SEN. WATERMAN** asked what sunsets in July. **Ms. Monroe** said the longevity for county attorneys. **SEN. WATERMAN** asked if the figure that shows the \$3,400,000 in 2002 reflects a continuation of the longevity. **Ms. Monroe** answered that it does. **SEN. WATERMAN** asked if there was legislation that would do that. **Ms. Monroe** said that Sec. 3b says a county attorney holding office may not be reduced under subsection 3a but future longevity increases may not be added to the salary. The way they are interpreting that is in keeping the longevity that they are paying the ten county attorneys right now. They would not lose that because presently they will make more than the 80% of a district judge salary. That will be maintained through FY2003. It would also have to continue on through FY 2003. In 2004 and 2005, the percentage increase of a district judge salary is higher than that so it basically replaces it. **SEN. WATERMAN** asked if the new fiscal note reflected amendments to SB 66 or just a delay in implementation. **Ms. Munro** said the printed fiscal note reflected the original SB 66. The white copy is with the amendments. The revised fiscal note was never requested. So they showed the impact of the amendments that were made to SB 66 in committee. **SEN. WATERMAN** said the white copy reflects the bill as it is now. She would like to see a revised fiscal note because most fiscal notes are based on existing law and what the law would be in the absence of the legislation. She thought it was reflected that with part of SB 66 passing the longevity continued. HB 2 as it now stands does not reflect longevity as

of July 1 because it sunsets. She was not sure the fiscal note reflects the increased cost in HB 2. She didn't understand the cost decrease in 2003. As a term-limited senator, she had a concern about passing the cost to the next legislature. She said if the bill was a good idea, why not fund it now instead of passing the cost on. **CHAIRMAN BOB KEENAN** asked **SEN. BOHLINGER** to request a new fiscal note. **SEN. BOHLINGER** addressed **SEN.**

WATERMAN's question about funding the bill now. He wished they could. He had 17 bills and four of them have costs. He would like to see them come forward. He has seen how tight the budget is. There is not adequate money to fund the bill right now, so it has to be implemented through a phased-in formula that will not be a future financial burden to the 2003 legislature, especially if that legislature were to consider increasing the fines on misdemeanor defendants from \$500 to a higher level as they did on felonies. That could be a source of funding paid for by the criminal population. **SEN. WATERMAN** asked about the July 1, 2002 phase in amounts the state is paying and 80% of what judges are getting. She also pointed out on page 3 line 17 that there is a gap. The bill sunsets on June 30, 2001 and a bill takes effect July 1, 2002. It seemed to her that for a year those longevity increases were gone. She didn't see in the bill where longevity continues after the first year. **Mr. Van**

Valkenburg stated that it was the opinion of the attorney general, a policy within the office, that longevity sunsets with respect to the ability of county commissioners to grant funding for longevity. What doesn't sunset, what continues, is that where county commissioners have granted longevity to county attorneys, that will continue to be part of their salary in the future, but as of July 1, 2001, no county can award longevity to a county attorney that hasn't already done so. **SEN. WATERMAN** said that longevity would be frozen for a year. She asked about increasing fines and whether there was legislation to do that.

SEN. BOHLINGER said there was no proposed legislation at this time to increase the fines on defendants in misdemeanor cases. He suggested it as consideration for the 2003 legislature as a funding source for the financial gap that has been identified.

SEN. ZOOK acknowledged the concern of **SEN. WATERMAN** regarding "if it's a good idea why not do it now." He said he understood the ramifications that might have. He asked why the bill phases in from 60% to 95% in one year and suggested a longer phase-in.

SEN. BOHLINGER said he would leave that up to the wisdom of the committee if it would be more appropriate to increase the phase in period over a longer period of time. A 10% increase could be taken from 2002 to 2003. From 2003 to 2004 it could be increased to 35%. He referred the question to **Mr. Paxinos** who explained that the reason for the increase was that in the original committee the question was posed very bluntly if they wanted the policy or the money. County attorneys said it was more important

to have the policy. The first two years are to implement the policy. That is the reason for the slow increment. It will slam in harder in years 3 and 4. He said the association will be in front of the legislature in two years with a funding mechanism. The \$500 misdemeanor fine has been there for 25 years and should go to \$1000. He stated that county attorneys did not want to be in a holding pattern for years and that he has never had a pay raise. **SEN. ZOOK** said that if he was one of the assistant county attorneys he would be very pleased to get a 10% raise over the next five, six or eight years time rather than one big shot at one time. Rather than not having that big shot, he thought he'd be glad to have the 10%. He thought it was a pretty big chunk. He wondered if it was important enough to have the new policy in place to stretch that time period out and give the state more time. It can always be changed two years down the road if there is a big pot of money from former **SEN. VAN VALKENBURG's** appraisal of the Bush tax plan. **Mr. Paxinos** affirmed that the legislators are the policy makers. He stated that they were trying to keep a professional corp of prosecutors and be able to tell them or anyone coming in that this is what the pay will be. To become a prosecutor now, attorney's have to give up their private practice or be a deputy county attorney for over three years. It used to be five years. The standards keep being lowered because its hard to find anyone willing to be a prosecutor. They are just trying to find a mechanism of saying just hang tough, this is what your pay will be. Committee members may think that it is better phased in over a longer period of time. He also heard a voice that said put it in right now. They were just trying to compromise and get the policy. **SEN. LINDA NELSON** said that part time county attorneys make in a range of from \$16,000 to \$33,000. She inquired how a part time county attorney makes as little as \$16,000 because the way she read the current law, they would make the minimum of 50% of the \$50,000. She wondered how they got down to \$16,000. **CHAIRMAN KEENAN** said that was the smaller counties. **SEN. NELSON** said that even at part time, they would be getting 50%. **SEN. BOHLINGER** said that in his testimony he said that part time county attorneys are paid in a range from \$16,000 to \$33,000 annually. **Mr. Van Valkenburg** said Petroleum County is the only county at that bottom figure, and they don't fall in the same category as every other county where the part time county attorney gets 50%. He believed that the DOJ set a rate for Petroleum County at 20%. Most part time county attorneys are in the range of \$29,000 to \$40,000 depending on the class of county involved. He passed out a list of the County Attorney Payroll Program. **EXHIBIT(fcs48a08)** **SEN. TASH** inquired if in some classes of counties, attorneys can have a private practice in conjunction with a county attorney practice. **Mr. Van Valkenburg** said that

if a county attorney is not full time, they can engage in private practice. That is inherent in the concept of being a part time county attorney.

{Tape : 3; Side : A}

SEN. TESTER reiterated that there is a minimum of 50% for the part time county attorneys and the county commissioners determine if its going up. **Mr. Van Valkenburg** stated that county commissioners determine both whether there is a COLA that is awarded on an annual basis, and whether to grant a county attorney longevity up until June 30th, 2001. There is a two year window for giving longevity. **SEN. TESTER** asked if the same was true for full time county attorneys as far as the COLA and longevity. **Mr. Van Valkenburg** affirmed that it was. **SEN. TESTER** asked if power would be taken away from the local governments if the bill passes. **Mr. Van Valkenburg** said that the power would largely remain as it is because county attorneys are locally elected officials. The county attorney is responsible to the attorney general and must act at the direction of the attorney general with respect to matters that the attorney general has jurisdiction over. That won't change with the passage of SB 66. To some extent, because the responsibility for funding would transfer more heavily to the state than the local level, in the long run the state will have more control than it otherwise would have had because it controls the purse strings. The check and balance is that the local voters are the people who elect the county attorney. **SEN. JOHNSON** asked about the fines being \$500 for twenty years for misdemeanors. He asked for a percentage of the fines that are collected. **Mr. Paxinos** did not have the accounting by county. **SEN. JOHNSON** asked about Yellowstone County. **Mr. Paxinos** said he did not have those numbers. **SEN. JOHNSON** asked if it was a high percentage. **Mr. Paxinos** said the state receives half. **SEN. JOHNSON** said he did not mean that. When a fine is levied, a fine is collected. He asked how much of that money is actually collected. He wondered if it was 50% or 75% and wondered where the crook gets the money. **Mr. Paxinos** replied that the justice court system deals with traffic offenses, DUI's, and assaults. He thought those had a high percentage rate of collection. **SEN. JOHNSON** asked that the information be supplied. **Mr. Paxinos** said that the J.P. also had the power to jail someone for failing to pay a fine. **SEN. JOHNSON** agreed that would be a deterrent. He inquired about the decrease that came as a result of the bill. Page 3 says that certain county attorneys would not get more than the percentage laid out in a particular year. **Ms. Munro** said that if they are already making above what the percentage is, that salary cannot be taken away. **SEN. JOHNSON** said that would have been budgeted

for those years if SB 66 did not go into effect. **Ms. Munro** restated that if SB 66 does not pass, county attorneys would still get their cost of living raise and longevity. **SEN. JOHNSON** observed that some people have already attained the level of 85% of district judge salary. That is how the state saves \$60,000. **Ms. Munro** said that was correct. **SEN. CHRISTIAENS** remarked that county attorneys need to come in by July of the year prior for any changes in the duties or a change to a full time county attorney. That was dealt with by the institutions subcommittee. Two counties came in and said they were going to full time. That part is already in the DOJ budget. **Ms. Munro** said that was correct. **SEN. CHRISTIAENS** said that the subcommittee deals with all of the county attorneys salaries through DOJ. He asked if fines have a high rate of payment and how that is tracked on felony convictions. If a four time DUI offender has a fine of \$1000 and they are sentenced to prison, his information says that very few of those fines are paid at the time of the sentence and that the probationary period requires that those fines are paid. If offenders are unemployed, he questioned if a \$1000 fine would be paid over a period of five or six years or more and how that was tracked. **Mr. Munro** replied that DOJ does not get those fines. **Mr. Paxinos** said that the fines are collected by the Justice of the Peace and half of the fine money goes to the state and half stays with the county. District court fine money stays with the district court. In felony convictions of 3-5 year sentences, the judge's condition is for fines to be paid over time. Justice Court gives up to one year to pay a fine off. Collection rates are much higher for justice court than district court. In Yellowstone County, the district judges are not concerned as much with fines as with treatment. **SEN. CHRISTIAENS** asked what agency keeps track of fines levied and paid. **Mr. Paxinos** said that 2 years ago, they were asking those same questions of the legislature when county attorneys were seeking longevity. **Mr. Jon Moe, Legislative Division**, answered that the money goes into the general fund and is tracked by the revenue codes as incoming revenue so it could be identified. He was not sure what the details would be. (**CHAIRMAN KEENAN** left to attend another meeting) **VICE-CHAIRMAN MILLER** asked **Mr. Moe** to find information on the percentage of collection. **SEN. WATERMAN** asked if the state pays 95%, will county attorneys be state employees or county employees. She recalled that in the original bill county attorneys became state employees and were 100% funded by the state. **Mr. Van Valkenburg** said that was correct. The county attorneys remain local government elected officials and the reason that got amended was because **Mr. Petesch** said that the constitution provides that county attorneys are local government elected officials. The only way to maintain continuity with that constitutional provision is to leave some percentage of salary to be paid by local governments. **SEN. WATERMAN** asked if that was

the reason that health insurance would be paid by the counties. **Mr. Van Valkenburg** said that was a way of holding down the cost on the bill, and county attorneys are happy with their current health insurance coverage. **SEN. WATERMAN** asked who determines whether county attorneys are full or part time. **Mr. Van Valkenburg** said that the county commissioners make that determination for counties under 30,000 population. The legislature has determined that counties with a population greater than 30,000 will have a full time county attorney. It is discretionary below that level. One of the questions that came up in Local Government Committee was if the state starts paying the 95%, there is no incentive for counties to have anything other than a full time county attorney. That was addressed with an amendment in the Local Government Committee that counties must get permission from the attorney general to change from part time to full time county attorney. The attorney general has the responsibility to go before the appropriations subcommittee in HB 2 and get the funding. Therefore the attorney general will not make the change unless he feels he can fully justify that to the committee. **SEN. WATERMAN** asked about Petroleum County being maintained at 20%. **Mr. Paxinos** said it was the intent of the County Attorney Association to leave everything as a status quo. It was not to give Petroleum County a pay raise. If that is the concern, they don't want that to move to the 50% level, but be capped at 20%. **SEN. WATERMAN** asked **Mr. Moe** to see if that is clear in the law. **Mr. Paxinos** said there is nothing in the current statutes that reflects the 20% for Petroleum County. It has been a course of business dealing with the attorney general and the county. If there is a hole there, they want to fill that gap. They were just trying to mimic the current statutes. **VICE-CHAIRMAN MILLER** asked about the fiscal note establishing a salary base in 2005. He asked how they calculated the salary of the district court judges as it is unknown and tied to the five state averages. **Ms. Munro** agreed it was tied to the five state averages. The increase from the biennium for FY2000 and 2001 to the next biennium was calculated as a 7% increase by state personnel at DOA. They held that same increase for the 2004 2005 biennium. **VICE-CHAIRMAN MILLER** asked if that was 7% per biennium. **Ms. Munro** said that in next biennium it goes to \$82,606. That will be increased another 7% in FY 2004 and 2005 to come up with the district judge salary estimated at \$88,388 for that biennium. **VICE-CHAIRMAN MILLER** asked if deputy county attorneys were included in the bill at all. **Mr. Paxinos** said that they were not. **VICE-CHAIRMAN MILLER** asked how their salary was calculated. **Mr. Paxinos** replied that each county varies. Some counties put their chief deputies as a percentage of county attorneys. Some pay them a different salary. The board of county commissioners contracts with the deputies. **VICE-CHAIRMAN**

MILLER asked if those salaries were county funded and if there was no state percent to those. Mr. Paxinos answered that those are paid by local taxpayers. **VICE-CHAIRMAN MILLER** asked if the same argument could not be used for them since they are also working implementing state laws. **Mr. Paxinos** said that until the state policy making board decides to go to a statewide district attorney's association, with district and assistant district attorneys, it is a tremendous cost to the state to add hundreds of state employees. He felt that the state was not prepared to go that direction yet. Maybe in 40 or 50 years there would be pure criminal prosecutors only paid for by the state and counties would have their own civil division. If the population increases, that is what he would recommend. Because Montana is a rural state and because there are urban and rural areas, they have done the very best they can to cobble together the system. They are trying to cobble together a system that they think will work for the next 15 or 20 years. **VICE-CHAIRMAN MILLER** joked that since they were dealing with human predators, maybe it could be funded through FWP.

Closing by Sponsor:

SEN BOHLINGER closed on SB 66 summarizing the information presented by county attorney's who testified as proponents. He also indicated support for the bill from **Gordon Morris, MACO (Montana Association of Counties)**, who could not attend the hearing.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. BOB KEENAN, Chairman

PRUDENCE GILDROY, Secretary

BK/PG

EXHIBIT (fcs48aad)